

# WORLD TRADE ORGANIZATION

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## Committee on Government Procurement

### REVISION OF THE AGREEMENT ON GOVERNMENT PROCUREMENT AS AT 8 DECEMBER 2006

Prepared by the Secretariat

This document contains the text of the revision of the 1994 Agreement on Government Procurement which was referred to by the Chairman of the Committee on Government Procurement in the formal meeting of the Committee on the afternoon of Friday, 8 December 2006.<sup>1</sup>

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<sup>1</sup> See paragraphs 20-21 of the Committee's Report to the General Council (GPA/89 of 11 December 2006).

## **Preamble**

Parties to this Agreement (hereinafter referred to as "Parties"),

*Recognizing* the need for an effective multilateral framework for government procurement, with a view to achieving greater liberalization and expansion of, and improving the framework for, the conduct of international trade;

*Recognizing* that measures regarding government procurement should not be prepared, adopted or applied so as to afford protection to domestic suppliers, goods, or services, or to discriminate among foreign suppliers, goods, or services;

*Recognizing* that the integrity and predictability of government procurement systems are integral to the efficient and effective management of public resources, the performance of the Parties' economies, and the functioning of the multilateral trading system;

*Recognizing* that the procedural commitments under this Agreement should be sufficiently flexible to accommodate the specific circumstances of each Party;

*Recognizing* the need to take into account the development, financial, and trade needs of developing countries, in particular the least-developed countries;

*Recognizing* the importance of transparent measures regarding government procurement, of carrying out procurements in a transparent and impartial manner, and of avoiding conflicts of interest and corrupt practices, in accordance with applicable international instruments, such as the United Nations Convention Against Corruption;

*Recognizing* the importance of using, and encouraging the use of, electronic means for procurement covered by this Agreement;

*Desiring* to encourage acceptance of and accession to this Agreement by WTO Members not party to it;

*Having undertaken* further negotiations in pursuance of these objectives;

Hereby *agree* as follows:

## **Article I      Definitions**

For purposes of this Agreement:

- (a) **commercial goods and services** means goods and services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;
- (b) **construction services contract** means a contract that has as its objective the realization by whatever means of civil or building works, based on Division 51 of the Provisional U.N. Central Product Classification (CPC);
- (c) **country or countries** include any separate customs territory that is a Party to this Agreement. In the case of a separate customs territory that is a Party to this Agreement, where an expression in this Agreement is qualified by the term "national", such expression shall be read as pertaining to that customs territory, unless otherwise specified;

- (d) **days** means calendar days;
- (e) **electronic auction** means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;
- (f) **in writing** or **written** means any worded or numbered expression that can be read, reproduced, and later communicated. It may include electronically transmitted and stored information;
- (g) **limited tendering** means a procurement method where the procuring entity contacts a supplier or suppliers of its choice;
- (h) **measure** means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;
- (i) **multi-use list** means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;
- (j) **notice of intended procurement** means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;
- (k) **offsets** means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade, and similar actions or requirements;
- (l) **open tendering** means a procurement method where all interested suppliers may submit a tender;
- (m) **person** means a natural person or a juridical person;
- (n) **procuring entity** means an entity covered under Annex 1, 2, or 3 of Appendix I of each Party;
- (o) **qualified supplier** means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;
- (p) **selective tendering** means a procurement method where only suppliers satisfying the conditions for participation are invited by the procuring entity to submit a tender;
- (q) **services** includes construction services, unless otherwise specified;
- (r) **standard** means a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines, or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a good, service, process, or production method;

- (s) **supplier** means a person or group of persons that provides or could provide goods or services;
- (t) **technical specification** means a tendering requirement that:
  - (i) lays down the characteristics of goods or services to be procured, including quality, performance, safety, and dimensions, or the processes and methods for their production or provision; or
  - (ii) addresses terminology, symbols, packaging, marking, or labelling requirements, as they apply to a good or service.

## **Article II Scope and Coverage**

### *Application of Agreement*

1. This Agreement applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.
2. For the purposes of this Agreement, covered procurement means procurement for governmental purposes:
  - (a) of goods, services, or any combination thereof:
    - (i) as specified in each Party's Appendix I; and
    - (ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;
  - (b) by any contractual means, including purchase; lease; and rental or hire purchase, with or without an option to buy;
  - (c) for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in Appendix I, at the time of publication of a notice in accordance with Article VII;
  - (d) by a procuring entity; and
  - (e) that is not otherwise excluded from coverage in paragraph 3 or in a Party's Appendix I.
3. Except where provided otherwise in a Party's Appendix I, this Agreement does not apply to:
  - (a) the acquisition or rental of land, existing buildings, or other immovable property or the rights thereon;
  - (b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees, and fiscal incentives;
  - (c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

- (d) public employment contracts;
  - (e) procurement conducted:
    - (i) for the specific purpose of providing international assistance, including development aid;
    - (ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or
    - (iii) under the particular procedure or condition of an international organization, or funded by international grants, loans, or other assistance where the applicable procedure or condition would be inconsistent with this Agreement.
4. Each Party shall specify the following information in its Appendix I annexes<sup>2</sup>:
- (a) in Annex 1, the central government entities whose procurement is covered by this Agreement;
  - (b) in Annex 2, the sub-central government entities whose procurement is covered by this Agreement;
  - (c) in Annex 3, all other entities whose procurement is covered by this Agreement;
  - (d) in Annex 4, the services covered by this Agreement;
  - (e) in Annex 5, the construction services covered by this Agreement; and
  - (f) in Annex 6, any General Notes applicable to the annexes of the Party.
5. Where a procuring entity, in the context of covered procurement, requires persons not listed in Appendix I to procure in accordance with particular requirements, Article V shall apply *mutatis mutandis* to such requirements.

#### *Valuation*

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:
- (a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Agreement; and
  - (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:
    - (i) premiums, fees, commissions, and interest; and

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<sup>2</sup> Negotiators' Note: The Parties are still considering whether to add a specific Annex on goods to Appendix I.

- (ii) where the procurement provides for the possibility of option clauses, the estimated maximum total value of the procurement, inclusive of optional purchases.

7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereafter referred to as "recurring procurements"), the calculation of the estimated maximum total value shall be based on:

- (a) the value of recurring procurements of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted where possible to take into account anticipated changes in the quantity or value of the good or service being procured over the subsequent 12 months; or
- (b) the estimated value of recurring procurements of the same type of good or service to be awarded during the 12 months subsequent to the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental, or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

- (a) in the case of a fixed-term contract:
  - (i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration, or
  - (ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;
- (b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and
- (c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

### **Article III Exceptions to the Agreement**

1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition, or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures:

- (a) necessary to protect public morals, order, or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to goods or services of persons with disabilities, philanthropic institutions, or prison labour.

#### **Article IV      Developing Countries**

1. In negotiations on accession to, and in the implementation and administration of, this Agreement, the Parties shall give special consideration to the development, financial, and trade needs and circumstances of developing countries and least-developed countries (collectively referred to hereafter as "developing countries", unless specifically identified otherwise), recognizing that these may differ significantly from country to country. As provided for in this Article and upon request, the Parties shall accord special and differential treatment to:

- (a) least-developed countries; and
- (b) any other developing country, where and to the extent that this special and differential treatment meets its development needs.

2. Upon accession by a developing country to this Agreement, each Party shall provide immediately to the goods, services, and suppliers of that country the most favourable coverage that the Party provides under Appendix I to any other Party to this Agreement, subject to any terms negotiated between that Party and the developing country in order to maintain an appropriate balance of opportunities under this Agreement.

3. Based on its development needs, and with the agreement of the Parties, a developing country may adopt or retain one or more of the following transitional measures, during a transition period and in accordance with a schedule, set out in an Annex to its Appendix I, and in a manner that does not discriminate among the Parties:

- (a) a price preference programme, provided that the programme:
  - (i) provides a preference only for the part of the tender incorporating goods or services originating in the developing country applying the preference or goods or services originating in other developing countries in respect of which the developing country applying the preference has an obligation to provide national treatment under a preferential agreement; and
  - (ii) is transparent, and the preference and its application in the procurement are clearly described in the notice of intended procurement;
- (b) an offset, provided that any requirement for, or consideration of, the imposition of the offset is clearly stated in the notice of intended procurement;
- (c) the phased-in addition of specific entities or sectors; and
- (d) a threshold that is higher than its permanent threshold.

4. In negotiations on accession to this Agreement, the Parties may agree to the delay of the application of any specific obligation in this Agreement, other than Article V:1(b), by an acceding developing country while that country completes its implementation of the obligation. The implementation period shall be for:

- (a) a least-developed country, five years after its accession to this Agreement; and
- (b) any other developing country, only the period necessary to implement the specific obligation, but not to exceed three years.

5. Any developing country that has been permitted a period in which to implement an obligation under paragraph 4 shall list in an Annex to its Appendix I the implementation period, the specific obligation subject to the implementation period, and any interim obligation with which it agrees to comply during the implementation period.

6. After this Agreement has entered into force for a developing country, the Committee, on request of the developing country, may:

- (a) extend the transition period for a measure permitted under paragraph 3 or the implementation period permitted under paragraph 4; or
- (b) approve the application of a new transitional measure permitted under paragraph 3, in special circumstances that were unforeseen during the accession process.

7. A developing country benefiting from a transitional measure provided for in paragraphs 3 or 6, or an implementation period provided for in paragraph 4, or any extension thereof under paragraph 6 shall take such steps during the transition period or implementation period as may be necessary to ensure that it is in compliance with this Agreement at the end of any such period. The developing country shall promptly notify the Committee of such steps.

8. The Parties shall give due consideration to any request by a developing country for technical cooperation and capacity building in relation to that country's accession to, or implementation of, this Agreement.

9. The Committee may develop procedures for the implementation of this Article. Such procedures may include provisions for voting on decisions relating to requests under paragraph 6.

10. The Committee shall review the operation and effectiveness of this Article every five years.

## **Article V      General Principles**

### *National Treatment and Non-Discrimination*

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of any other Party and to the suppliers of any other Party offering the goods or services of any Party, treatment no less favourable than the treatment the Party, including its procuring entities, accords to:

- (a) domestic goods, services, and suppliers; and
- (b) goods, services, and suppliers of any other Party.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

- (a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; nor
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of any other Party.

*Use of Electronic Means*

3. When conducting covered procurement by electronic means, a procuring entity shall:
  - (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and
  - (b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

*Conduct of Procurement*

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:
  - (a) is consistent with this Agreement, using methods such as open tendering, selective tendering, and limited tendering;
  - (b) avoids conflicts of interest; and
  - (c) prevents corrupt practices.

*Rules of Origin*

5. For purposes of covered procurement, no Party may apply rules of origin to goods or services imported from or supplied by another Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

*Offsets*

6. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose, or enforce offsets.

*Measures Not Specific to Procurement*

7. The provisions of paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on, or in connection with, importation, the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

**Article VI Information on the Procurement System**

1. Each Party shall:
  - (a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clauses mandated by law or regulation and incorporated by reference in notices and tender documentation, and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and

- (b) provide an explanation thereof to any Party, on request.
2. Each Party shall list:
- (a) in Appendix II, the electronic or paper media in which the Party publishes the information regarding the Party's procurement system as required by paragraph 1;
  - (b) in Appendix III, the electronic or paper media in which the Party publishes the notices required by Articles VII, IX:7, and XVI:2; and
  - (c) in Appendix IV, the website address or addresses where the Party publishes:
    - (i) its procurement statistics pursuant to Article XVI:5, as a substitute for the submission of the data required under Article XVI:4;
    - (ii) its notices concerning awarded contracts pursuant to Article XVI:6, as a substitute for the report required under Article XVI:4.
3. Each Party shall promptly notify the Committee of any modification to the Party's information listed in Appendix II, III, or IV.

## **Article VII Notices**

### *Notice of Intended Procurement*

1. For each covered procurement, except in the circumstances described in Article XIII, a procuring entity shall publish a notice of intended procurement in the appropriate paper or electronic medium listed in Appendix III. Such medium shall be widely disseminated and such notices shall remain readily accessible to the public, at least, until expiration of the time period indicated in the notice. The notices shall:
- (a) for procuring entities in Annex 1, be accessible by electronic means free of charge, for at least any minimum period of time specified in Appendix III, through a single point of access; and
  - (b) for procuring entities in Annexes 2 and 3, where accessible by electronic means, be provided, at least, through links in a gateway electronic site that is accessible free of charge.

Parties, including their procuring entities in Annexes 2 and 3, are encouraged to publish their notices by electronic means free of charge through a single point of access.

2. Except as otherwise provided in this Agreement, each notice of intended procurement shall include:
- (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;
  - (b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;

- (c) for recurring contracts, if possible, an estimate of the timing of subsequent notices of intended procurement;
- (d) a description of any options;
- (e) the time-frame for delivery of goods or services or the duration of the contract;
- (f) the procurement method that will be used and whether it will involve negotiation or electronic auction;
- (g) where applicable, the address and any final date for the submission of requests for participation in the procurement;
- (h) the address and the final date for the submission of tenders;
- (i) the language or languages in which tenders or requests for participation must be submitted, if other than an official language of the Party of the procuring entity;
- (j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;
- (k) where, pursuant to Article IX, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and
- (l) an indication that the procurement is covered by this Agreement.

#### *Summary Notice*

3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in one of the WTO languages. The notice shall contain at least the following information:

- (a) the subject-matter of the procurement;
- (b) the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and
- (c) the address from which documents relating to the procurement may be requested.

#### *Notice of Planned Procurement*

4. Procuring entities are encouraged to publish in the appropriate paper or electronic medium listed in Appendix III as early as possible in each fiscal year a notice regarding their future procurement plans. The notice should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

5. A procuring entity in Annex 2 or 3 may use a notice of planned procurement as a notice of intended procurement provided that it includes as much of the information in paragraph 2 as is available and a statement that interested suppliers should express their interest in the procurement to the entity.

### **Article VIII Conditions for Participation**

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal, commercial, technical, and financial abilities to undertake the relevant procurement.

2. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

- (a) shall evaluate the financial, commercial, and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity;
- (b) shall base its determination on the conditions that the procuring entity has specified in advance in notices or tender documentation;
- (c) may not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a given Party; and
- (d) may require relevant prior experience where essential to meet the requirements of the procurement.

3. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

- (a) bankruptcy;
- (b) false declarations;
- (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
- (d) final judgments in respect of serious crimes or other serious offences;
- (e) professional misconduct or acts or omissions that adversely reflect upon the commercial integrity of the supplier; or
- (f) failure to pay taxes.

### **Article IX Qualification of Suppliers**

#### *Registration Systems and Qualification Procedures*

1. A Party, including its procuring entities, may maintain a supplier registration system where interested suppliers are required to register and provide certain information.

2. Each Party shall ensure that:
  - (a) its procuring entities make efforts to minimize differences in their qualification procedures; and
  - (b) where its procuring entities maintain registration systems, the entities make efforts to minimize differences in their registration systems.
3. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of foreign suppliers in its procurement.

*Selective Tendering*

4. Where a procuring entity intends to use selective tendering, the entity shall:
  - (a) in the notice of intended procurement include at least the information in Article VII:2(a), (b), (f), (g), (j), (k), and (l) and invite suppliers to submit a request for participation; and
  - (b) by the commencement of the time-period for tendering, provide at least the information in Article VII:2 (c), (d), (e), (h), and (i) to the qualified suppliers that it notifies in accordance with Article XI:3(b).
5. A procuring entity shall recognize as a qualified supplier any domestic supplier and any supplier of another Party that meets the conditions for participation in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.
6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5.

*Multi-Use Lists*

7. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:
  - (a) published annually; and
  - (b) where published by electronic means, made available continuously,in the appropriate medium listed in Appendix III.
8. The notice provided for in paragraph 7 shall include:
  - (a) a description of the goods or services, or categories thereof, for which the list may be used;
  - (b) the conditions for participation to be satisfied by suppliers and the methods that the procuring entity will use to verify a supplier's satisfaction of the conditions;
  - (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;

- (d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and
- (e) an indication that the list may be used for procurement covered by this Agreement.

9. Notwithstanding paragraph 7, where a multi-use list will be valid for three years or less, a procuring entity may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:

- (a) states the period of validity and that further notices will not be published; and
- (b) is published by electronic means and is made available continuously during the period of its validity.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents relating thereto, within the time-period provided for in Article XI:2, a procuring entity shall examine the request. The procuring entity may not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time-period allowed for the submission of tenders.

#### *Annexes 2 and 3 Entities*

12. A procuring entity listed in Annex 2 or 3 may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

- (a) the notice is published in accordance with paragraph 7 and includes the information in paragraph 8, as much of the information in Article VII:2 as is available, and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list;
- (b) the entity promptly provides to suppliers that have expressed an interest to the entity in a given procurement, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article VII:2, to the extent such information is available; and
- (c) a supplier having applied for inclusion on a multi-use list in accordance with paragraph 10 may be allowed to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether it satisfies the conditions for participation.

#### *Information on Procuring Entity Decisions*

13. A procuring entity shall promptly inform any supplier that submits a request for participation or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request.

14. Where a procuring entity rejects a supplier's request for participation or application for inclusion on a multi-use list, ceases to recognize a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

## **Article X Technical Specifications and Tender Documentation**

### *Technical Specifications*

1. A procuring entity shall not prepare, adopt, or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

- (a) specify the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and
- (b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognized national standards, or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as "or equivalent" in the tender documentation.

4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt, or apply technical specifications to promote the conservation of natural resources or protect the environment.

### *Tender Documentation*

7. A procuring entity shall provide to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

- (a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings, or instructional materials;

- (b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection therewith;
- (c) all evaluation criteria to be considered in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;
- (d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the receipt of information by electronic means;
- (e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;
- (f) where there will be a public opening of tenders, the date, time, and place for the opening and, where appropriate, the persons authorized to be present;
- (g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, e.g., paper or electronic means; and
- (h) any dates for the delivery of goods or the supply of services.

8. In establishing any delivery date for the goods or services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

9. The evaluation criteria set out in the notice or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics, and terms of delivery.

10. A procuring entity shall promptly:

- (a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;
- (b) provide, on request, the tender documentation to any interested supplier; and
- (c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.

#### *Modifications*

11. Where, prior to the award of a contract, a procuring entity modifies the criteria or technical requirements set out in a notice or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

- (a) to all suppliers that are participating at the time the information is amended, if known, and in all other cases, in the same manner as the original information; and

- (b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

## **Article XI Time-Periods**

### *General*

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

- (a) the nature and complexity of the procurement;
- (b) the extent of subcontracting anticipated; and
- (c) the time for transmitting tenders from foreign as well as domestic points where electronic means are not used.

Such time-periods, including any extension of the time-periods, shall be common for all interested or participating suppliers.

### *Deadlines*

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4 and 5, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

- (a) in the case of open tendering, the notice of intended procurement is published; or
- (b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time-period for tendering set out in paragraph 3 to not less than 10 days where:

- (a) the procuring entity published a notice of planned procurement under Article VII:4 at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:
  - (i) a description of the procurement;
  - (ii) the approximate final dates for the submission of tenders or requests for participation;
  - (iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;
  - (iv) the address from which documents relating to the procurement may be obtained; and

- (v) as much of the information that is required under Article VII:2 for the notice of intended procurement, as is available;
  - (b) the procuring entity, for procurements of a recurring nature, indicates in an initial notice of intended procurement that subsequent notices will provide time periods for tendering based on this paragraph; or
  - (c) a state of urgency duly substantiated by the procuring entity renders such time-period impracticable.
5. A procuring entity may reduce the time-period for tendering set out in paragraph 3 by five days for each one of the following circumstances:
- (a) the notice of intended procurement is published by electronic means;
  - (b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and
  - (c) the tenders can be received by electronic means by the procuring entity.
6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time-period for tendering set out in paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.
7. Notwithstanding any other time-period in this Article, where a procuring entity purchases commercial goods or services, it may reduce the time-period for tendering set out in paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. Where the entity also accepts tenders for commercial goods and services by electronic means, it may reduce the time period set out in paragraph 3 to not less than 10 days.
8. Where a procuring entity in Annex 2 or 3 has selected all or a limited number of qualified suppliers, the time-period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

## **Article XII Negotiation**

1. A Party may provide for its procuring entities to conduct negotiations:
- (a) in the context of procurements in which they have indicated such intent in the notice of intended procurement required under Article VII:2; or
  - (b) where it appears from the evaluation that no one tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice or tender documentation.
2. A procuring entity shall:
- (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice or tender documentation; and

- (b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

### **Article XIII Limited Tendering**

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Parties or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles VII through IX, X (paragraphs 7 through 11), XI, XII, XIV, and XV only under the following circumstances:

- (a) provided that the requirements of the tender documentation are not substantially modified where:
  - (i) no tenders were submitted or no suppliers requested participation ;
  - (ii) no tenders that conform to the essential requirements of the tender documentation were submitted;
  - (iii) no suppliers satisfied the conditions for participation; or
  - (iv) the tenders submitted have been collusive;
- (b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:
  - (i) the requirement is for a work of art;
  - (ii) the protection of patents, copyrights or other exclusive rights; or
  - (iii) due to an absence of competition for technical reasons;
- (c) for additional deliveries by the original supplier of goods and services that were not included in the initial procurement where:
  - (i) a change of supplier for such additional goods and services can not be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services, or installations procured under the initial procurement; and
  - (ii) such separation would cause significant inconvenience or substantial duplication of costs to the procuring entity;
- (d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;
- (e) for goods purchased on a commodity market;
- (f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of

field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production, or supply to establish commercial viability, or to recover research and development costs;

- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership, or bankruptcy, but not for routine purchases from regular suppliers; and
- (h) where a contract is awarded to a winner of a design contest provided that:
  - (i) the contest has been organized in a manner that is consistent with the principles of this Agreement, in particular relating to the publication of a notice of intended procurement; and
  - (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. Each such report shall include the name of the procuring entity, the value and kind of goods or services procured, and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

#### **Article XIV Electronic Auctions**

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

- (a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;
- (b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and
- (c) any other relevant information relating to the conduct of the auction.

#### **Article XV Treatment of Tenders and Contract Awards**

##### *Treatment of Tenders*

1. A procuring entity shall receive, open, and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.

2. A procuring entity shall not penalize any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

3. When a procuring entity provides suppliers with opportunities to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunities to all participating suppliers.

*Awarding of Contracts*

4. To be considered for award, a tender must be in writing and must, at the time of opening, comply with the essential requirements of the notices and tender documentation and be from a supplier that satisfies the conditions for participation.
5. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the entity has determined to be fully capable of undertaking the contract and, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:
  - (a) the most advantageous tender; or
  - (b) where price is the sole criterion, the lowest price.
6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it can comply with the conditions of participation and is capable of fulfilling the terms of the contract.
7. A procuring entity shall not use option clauses, cancel a procurement, or modify awarded contracts in a manner that circumvents the obligations of this Agreement.

**Article XVI Transparency of Procurement Information**

*Information Provided to Suppliers*

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on request, in writing. Subject to Article XVII, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons that the entity did not select its tender and the relative advantages of the successful supplier's tender.

*Publication of Award Information*

2. Not later than 72 days after the award of each contract covered by this Agreement, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Appendix III. Where only an electronic medium is used, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:
  - (a) a description of the goods or services procured;
  - (b) the name and address of the procuring entity;
  - (c) the name and address of the successful supplier;
  - (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;
  - (e) the date of award; and
  - (f) the type of procurement method used, and in cases where limited tendering was used pursuant to Article XIII, a description of the circumstances justifying the use of limited tendering.

*Maintenance of Documentation, Reports, and Electronic Traceability*

3. Each procuring entity shall, for a period of at least three years from the award of the contract maintain:
  - (a) documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article XIII; and
  - (b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

*Collection and Report of Statistics*

4. Each Party shall collect and report to the Committee statistics on its contracts covered by this Agreement. Each report shall cover one year and be submitted within two years of the end of the reporting period, and shall contain:
  - (a) for Annex 1 procuring entities:
    - (i) the number and total value, for all such entities, of contracts covered by this Agreement;
    - (ii) the number and total value of all contracts covered by this Agreement awarded by such entities, broken down by categories of goods and services according to an internationally recognized uniform classification system; and
    - (iii) the number and total value of contracts covered by this Agreement awarded by each such entity under limited tendering;
  - (b) for Annex 2 and 3 procuring entities, the number and total value of contracts covered by this Agreement awarded by all such entities, broken down by Annex; and
  - (c) estimates for the information required under subparagraphs (a) and (b), with an explanation of the methodology used to develop the estimates, where it is not feasible to provide the data.

5. Where a Party publishes its statistics on an official website, the Party may substitute a notification of the website address for the submission of the data under paragraph 4, with any instructions necessary to access and use such statistics, in accordance with the requirements of paragraph 4 .

6. Where a Party requires notices concerning awarded contracts, pursuant to paragraph 2, to be published electronically and where such notices are accessible to the public through a single database in a form permitting analysis of the covered contracts, the Party may substitute a notification of the website address for the submission of the data under paragraph 4, with any instructions necessary to access and use such data.

**Article XVII Disclosure of Information**

*Provision of Information to Parties*

1. On request of any other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Agreement, including information on the characteristics and relative advantages of the successful

tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives that information shall not disclose it to any supplier, except after consultation with, and agreement of, the Party that provided the information.

*Non-Disclosure of Information*

2. Notwithstanding any other provision of this Agreement, a Party, including its procuring entities, may not provide information to a particular supplier that might prejudice fair competition between suppliers.

3. Nothing in this Agreement shall be construed to require a Party, including its procuring entities, authorities, and review bodies, to release confidential information under this Agreement where release:

- (a) would impede law enforcement;
- (b) might prejudice fair competition between suppliers;
- (c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
- (d) would otherwise be contrary to the public interest.

**Article XVIII Domestic Review Procedures for Supplier Challenges**

1. Each Party shall provide a timely, effective, transparent, and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

- (a) a breach of the Agreement; or
- (b) where the supplier does not have a right to challenge directly a breach of the Agreement under the domestic law of a Party, a failure to comply with a Party's measures implementing this Agreement,

arising in the context of a covered procurement, in which it has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach of this Agreement or, where the supplier does not have a right to challenge directly a breach of this Agreement under the domestic law of a Party, a failure to comply with a Party's measures implementing this Agreement, each Party shall encourage the procuring entity and supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

6. A review body that is not a court shall either be subject to judicial review or have procedures that provide that:

- (a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;
- (b) the participants to the proceedings ("participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;
- (c) the participants shall have the right to be represented and accompanied;
- (d) the participants shall have access to all proceedings;
- (e) the participants shall, have the right to request that the proceedings take place in public and that witnesses may be presented; and
- (f) decisions or recommendations relating to supplier challenges shall be provided, in a timely fashion, in writing, with an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

- (a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and
- (b) where a review body has determined that there has been a breach of this Agreement or, where the supplier does not have a right to challenge directly a breach of this Agreement under the domestic law of a Party, a failure by a procuring entity to comply with a Party's measures implementing this Agreement, corrective action or compensation for the loss or damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

## **Article XIX Modifications and Rectifications to Coverage**

### *Notification of Proposed Modification*

1. A Party shall notify the Committee of any proposed rectification, transfer of an entity from one Annex to another, withdrawal of an entity, or other modification (referred to generally in this Article as "modification") of Appendix I. The Party proposing the modification ("modifying Party") shall include in the notification:

- (a) for any proposed withdrawal of an entity from Appendix I in exercise of its rights on the grounds that government control or influence over the entity's covered procurement has been effectively eliminated, evidence of such elimination; or

- (b) for any other proposed modification, information as to the likely consequences of the change for the mutually agreed coverage provided in this Agreement.

*Objection to Notification*

2. Any Party whose rights under this Agreement may be affected by a proposed modification notified under paragraph 1 may notify the Committee of any objection to the proposed modification. Such objections shall be made within 45 days from the date of the circulation to the Parties of the notification, and shall set out reasons for the objection.

*Consultations*

3. The modifying Party and any Party making an objection ("objecting Party") shall make every attempt to resolve the objection through consultations. In such consultations, the modifying and objecting Parties shall consider the proposed modification:

- (a) in the case of a notification under paragraph 1(a), in accordance with any indicative criteria adopted pursuant to paragraph 8 indicating the effective elimination of government control or influence over an entity's covered procurement; and
- (b) in the case of a notification under paragraph 1(b), in accordance with any criteria adopted pursuant to paragraph 8 relating to the level of compensatory adjustments to be offered for modifications, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Agreement.

*Revised Modification*

4. Where the modifying Party and any objecting Party resolve the objection through consultations, and the modifying Party revises its proposed modification as a result of those consultations, the modifying Party shall notify the Committee in accordance with paragraph 1, and any such revised modification shall only be effective after fulfilling the requirements of this Article.

*Implementation of Modifications*

5. A proposed modification shall become effective only where:
- (a) no Party submits to the Committee a written objection to the proposed modification within 45 days from the date of circulation of the notification of the proposed modification under paragraph 1;
  - (b) all objecting Parties have notified the Committee that they withdraw their objections to the proposed modification; or
  - (c) 150 days from the date of circulation of the notification of the proposed modification under paragraph 1 have elapsed, and the modifying Party has informed the Committee of its intention to implement the modification.

*Withdrawal of Substantially Equivalent Coverage*

6. Where a modification becomes effective pursuant to paragraph 5(c), any objecting Party may withdraw substantially equivalent coverage. Notwithstanding Article V:1(b), a withdrawal pursuant to this paragraph may be implemented solely with respect to the modifying Party. Any objecting

Party shall inform the Committee of any such withdrawal at least 30 days before the withdrawal becomes effective. A withdrawal pursuant to this paragraph shall be consistent with any criteria relating to the level of compensatory adjustment adopted by the Committee pursuant to paragraph 8.

*Arbitration Procedures to Facilitate Resolution of Objections*

7. Where the Committee has adopted arbitration procedures to facilitate the resolution of objections pursuant to paragraph 8, a modifying or any objecting Party may invoke the arbitration procedures within 120 days of circulation of the notification of the proposed modification.

- (a) Where no Party has invoked the arbitration procedures within the time-period:
  - (i) notwithstanding paragraph 5(c), the proposed modification shall become effective where 130 days from the date of circulation of the notification of the proposed modification under paragraph 1 have elapsed, and the modifying Party has informed the Committee of its intention to implement the modification; and
  - (ii) no objecting Party may withdraw coverage pursuant to paragraph 6.
- (b) Where a modifying Party or objecting Party has invoked the arbitration procedures:
  - (i) notwithstanding paragraph 5(c), the proposed modification shall not become effective before the completion of the arbitration procedures;
  - (ii) any objecting Party that intends to enforce a right to compensation, or to withdraw substantially equivalent coverage pursuant to paragraph 6, shall participate in the arbitration proceedings;
  - (iii) a modifying Party should comply with the results of the arbitration procedures in making any modification effective pursuant to paragraph 5(c); and
  - (iv) where a modifying Party does not comply with the results of the arbitration procedures in making any modification effective pursuant to paragraph 5(c), any objecting Party may withdraw substantially equivalent coverage pursuant to paragraph 6, provided that any such withdrawal is consistent with the result of the arbitration procedures.

*Committee Responsibilities*

8. The Committee shall adopt:
- (a) arbitration procedures to facilitate resolution of objections under paragraph 2;
  - (b) indicative criteria that demonstrate the effective elimination of government control or influence over an entity's covered procurement; and
  - (c) criteria that indicate how to determine the level of compensatory adjustment to be offered for modifications made pursuant to paragraph 1(b) and substantially equivalent coverage under paragraph 6.

## **Article XX Consultations and Dispute Settlement**

1. Each Party shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by another Party with respect to any matter affecting the operation of this Agreement.

2. Where any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of:

- (a) the failure of another Party or Parties to carry out its obligations under this Agreement; or
- (b) the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement,

it may with a view to reaching a mutually satisfactory solution to the matter, have recourse to the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as "the Dispute Settlement Understanding").

3. The Dispute Settlement Understanding applies to consultations and the settlement of disputes under this Agreement, with the exception that, notwithstanding paragraph 3 of Article 22 of the Dispute Settlement Understanding, any dispute arising under any Agreement listed in Appendix 1 to the Dispute Settlement Understanding other than this Agreement shall not result in the suspension of concessions or other obligations under this Agreement, and any dispute arising under this Agreement shall not result in the suspension of concessions or other obligations under any other Agreement listed in Appendix 1 of the Dispute Settlement Understanding.

## **Article XXI Institutions**

### *Committee on Government Procurement*

1. A Committee on Government Procurement composed of representatives from each of the Parties shall be established. This Committee shall elect its own Chairman and shall meet as necessary, but not less than once a year, for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Agreement or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.

2. The Committee may establish working parties or other subsidiary bodies that shall carry out such functions as may be given to them by the Committee.

3. The Committee shall annually:

- (a) review the implementation and operation of this Agreement; and
- (b) inform the General Council of the WTO of developments relating to the implementation and operation of this Agreement.

### *Observers*

4. Any WTO Member that is not a Party to this Agreement shall be entitled to participate in the Committee as an observer upon submission of a written notice to the Secretariat. Any WTO observer may submit a written request to the Secretariat to participate in the Committee as an observer, and may be accorded observer status by the Committee.

## **Article XXII Final Provisions**

### *Acceptance and Entry into Force*

1. This Agreement shall enter into force on [ ] for those WTO Members whose agreed coverage is set out in Annexes 1 through 6 of Appendix I, and that have, by signature, accepted this Agreement on [ ], or have, by or on that date, signed this Agreement subject to ratification and have subsequently ratified this Agreement before [ ].

### *Transitional Arrangements*

2. Between the Parties to this Agreement that are also Parties to the Agreement on Government Procurement dated 15 April 1994 ("1994 Agreement"), the 1994 Agreement shall cease to apply on the date of entry into force of this Agreement for those Parties. When all Parties to the 1994 Agreement have accepted this Agreement, the 1994 Agreement shall be terminated.<sup>3</sup>

3. The provisions of Articles XVIII and XX of this Agreement shall apply to covered procurement that has commenced after the entry into force of this Agreement.<sup>4</sup>

### *Provisional Application*

4. A Party to the 1994 Agreement may, notwithstanding its commitments in the 1994 Agreement, maintain or adopt any measure that is consistent with the provisions of this Agreement.<sup>5</sup>

### *Accession*

5. Any Member of the WTO may accede to this Agreement on terms to be agreed between that Member and the Parties. Accession shall take place by deposit with the Director-General of the WTO of an instrument of accession that states the terms so agreed. This Agreement shall enter into force for an acceding Member on the 30<sup>th</sup> day following the deposit of its instrument of accession the date of its accession to this Agreement.<sup>6</sup>

### *Reservations*

6. No Party may enter any reservation in respect of any provisions of this Agreement.

### *National Legislation*

7. Each Party shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures, and the rules, procedures, and practices applied by its procuring entities, with the provisions of this Agreement.

8. Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

9. The Parties shall seek to avoid introducing or continuing discriminatory measures and practices that distort open procurement.

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<sup>3</sup> Negotiators' Note: The Parties are still considering the need for and the content of this paragraph.

<sup>4</sup> Negotiators' Note: The Parties are still considering the need for and the content of this paragraph.

<sup>5</sup> Negotiators' Note: The Parties are still considering the need for and the content of this paragraph.

<sup>6</sup> Negotiators' Note: The Parties are still considering this paragraph.

### *Future Work*

10. Not later than the end of [...] from the date of entry into force of this Agreement, and periodically thereafter, the Parties thereto shall undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties, taking into consideration the needs of developing countries.<sup>7</sup>

11. The Parties shall, in the context of the negotiations referred to in paragraph 10, seek to eliminate discriminatory measures which remain on the date of entry into force of this Agreement.<sup>8</sup>

12. Following the conclusion of the work programme for the harmonization of rules of origin for goods being undertaken under the Agreement on Rules of Origin in Annex 1A of the Agreement Establishing the World Trade Organization and negotiations regarding trade in services, the Parties shall take the results of that work programme and those negotiations into account in amending Article V:5, as appropriate.

13. Not later than the end of the third year from the date of entry into force of this Agreement, the Committee shall undertake further work to consider the advantages and disadvantages of developing common nomenclature for goods and services and standardized notices

14. Beginning two years after entry into force of this Agreement, the Committee shall regularly assess the effective use of Articles XVI:4 and 5.

15. Not later than the end of the fifth year from the date of entry into force of this Agreement, the Committee shall examine the applicability of Article XX:2(b).

### *Amendments*

16. The Parties may amend this Agreement having regard, *inter alia*, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with the procedures established by the Committee, shall take effect for the Parties that have accepted them upon acceptance by [ ] of the Parties and thereafter for each other Party upon acceptance by it.<sup>9</sup>

17. Amendments to provisions of this Agreement of a nature that would alter the rights and obligations of the Parties, shall take effect for the Parties that have accepted them upon acceptance by [ ] of the Parties and thereafter for each other Party upon acceptance by it. The Committee may decide by a [...] majority of the Parties that any amendment made effective under paragraph 16 is of such a nature that any Party which has not accepted it within a specified period shall be free to withdraw from this Agreement or to remain with the consent of the Committee.<sup>10</sup>

18. Amendments to provisions of this Agreement of a nature that would not alter the rights and obligations of the Parties shall take effect for all Parties upon acceptance by [...] of the Parties.<sup>11</sup>

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<sup>7</sup> Negotiators' Note: The Parties shall review the content of this paragraph before the end of the negotiations.

<sup>8</sup> Negotiators' Note: The Parties shall review the content of this paragraph before the end of the negotiations.

<sup>9</sup> Negotiators' Note: The Parties are still considering the need for and the content of this paragraph.

<sup>10</sup> Negotiators' Note: The Parties are still considering the need for and the content of this paragraph.

<sup>11</sup> Negotiators' Note: The Parties are still considering the need for and the content of this paragraph.

*Withdrawal*

19. Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of 60 days from the date the Director-General of the WTO receives written notice of the withdrawal. Any Party may upon such notification request an immediate meeting of the Committee.

20. Where a Party to this Agreement ceases to be a Member of the WTO, it shall cease to be a Party to this Agreement with effect from the same date on which the Party ceases to be a Member of the WTO.

*Non-application of this Agreement between Particular Parties*

21. This Agreement shall not apply as between any two Parties where either Party, at the time it accepts or accedes to this Agreement, does not consent to such application.

*Appendices*

22. The Appendices to this Agreement constitute an integral part thereof.

*Secretariat*

23. This Agreement shall be serviced by the WTO Secretariat.

*Deposit*

24. This Agreement shall be deposited with the Director-General of the WTO, who shall promptly furnish to each Party a certified true copy of this Agreement, of each rectification or modification thereto pursuant to Article XIX and of each amendment thereto pursuant to paragraph 16, and a notification of each accession thereto pursuant to paragraph 5 and of each withdrawal therefrom pursuant to paragraph 19.

*Registration*

25. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

*Done* at [ ] this [ ] day of [ ] in a single copy in the English, French and Spanish languages, each text being authentic, except as otherwise specified with respect to the Appendices hereto.

**[(DRAFT DECISION)]**

Arrangement for the period of co-existence of the 1994 Agreement on Government Procurement and the [2007] Agreement on Government Procurement<sup>12</sup>

The Committee on Government Procurement,

*Noting* that not all Parties to the Agreement on Government Procurement dated 15 April 1994 (hereinafter referred to as the "1994 Agreement") may become a Party to the Agreement on Government Procurement done on [... 2007] (hereinafter referred to as the "2007 Agreement") as of its date of entry into force,

*Considering* that, during the period of co-existence of the 1994 Agreement and the 2007 Agreement, a Party to the 1994 Agreement which has become a Party to the 2007 Agreement should have the right to act in accordance with the provisions of the 2007 Agreement notwithstanding any inconsistency with the provisions of the 1994 Agreement, vis-à-vis Parties to the 1994 Agreement that are not Parties to the 2007 Agreement,

*Considering moreover* that, during that period of co-existence, a Party to the 1994 Agreement which has become a Party to the 2007 Agreement should not be under a legal obligation to extend the benefits accorded solely under the 2007 Agreement to the Parties of the 1994 Agreement which have not yet become Parties to the 2007 Agreement.

*Decides* as follows:

1. A Party to the 1994 Agreement that is a Party to the 2007 Agreement may maintain or adopt any measure consistent with the provisions of the 2007 Agreement, notwithstanding the provisions of the 1994 Agreement, vis-à-vis a Party to the 1994 Agreement that is not a Party to the 2007 Agreement until the entry into force for that Party to the 2007 Agreement.
2. A Party to the 1994 Agreement that is a Party to the 2007 Agreement is not under any obligation to accord to goods, services and suppliers of any other Party to the 1994 Agreement that has not yet become a Party to the 2007 Agreement the benefits accorded solely as a result of the commitments or other obligations assumed under the 2007 Agreement.
3. The provisions of Articles XX and XXII of the 1994 Agreement shall not apply in respect of measures referred to in paragraph 1.
4. This Decision shall enter into force on the date of entry into force of the 2007 Agreement.

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<sup>12</sup> Negotiators' Note: The Parties are still considering the content of this Decision. Some Parties question the need for this Decision.

**PROPOSED DECISION OF THE COMMITTEE ON  
GOVERNMENT PROCUREMENT**

Decision of [day/month/year]

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The Committee on Government Procurement,

*Noting* that the Parties to the GPA have completed negotiations on [the non-market-access-related provisions of] a new Government Procurement Agreement (hereinafter referred to as the "2007 Agreement");

*Desiring* to ensure the effective operation of Article XIX:1(a) of the 2007 Agreement where a Party proposes the withdrawal of an entity from Appendix I in exercise of its rights, and to enhance the predictability of the Agreement;

*Noting* that Article XIX:8 of the 2007 Agreement requires that the Committee develop arbitration procedures to facilitate resolution of objections, indicative criteria that demonstrate the effective elimination of government control or influence over an entity's covered procurement, and criteria that indicate how to determine the level of compensatory adjustment to be offered for modifications of coverage under Article XIX of the 2007 Agreement;

*Recognizing* the extensive work already undertaken by the Committee on the development of arbitration procedures to facilitate resolution of objections and indicative criteria, but also that further work is needed,

*Decides* as follows:

The Committee shall:

- (1) complete the development of arbitration procedures and indicative criteria, with the aim of adopting them by the entry into force of the 2007 Agreement; and
- (2) develop criteria that indicate how to determine the level of compensatory adjustment to be offered for modifications of coverage under Article XIX of the 2007 Agreement, with the aim of adopting the criteria within 18 months of entry into force of the 2007 Agreement.

The arbitration procedures shall not become effective until the adoption of the indicative criteria.

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